(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

APPEAL FROM ORDER NO. 21 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S. R. Rivankar, Government Advocate for the appellant.

Shri V. B. Nadkarni, Senior Advocate with Shri Y. V. Nadkarni, advocate for respondent nos.1, 3 and 4.

CORAM : S. A. BOBDE, J.

DATE : 24th June, 2004

P.C.

This Appeal is preferred by the Government against the Order dated 23rd December, 2003, by which the learned Civil Judge, Senior Division, Panaji, has granted an injunction restraining the appellant from carrying out any works in the suit portion. The respondents filed a suit, inter alia, for a declaration and injunction restraining the appellant from carrying out any works in the suit portion.

2. The land in question is

the suit property surveyed under old cadastral survey plan prepared by the Government in 1905 under no. 1054. According to the respondents, this property was purchased by the late Domingo Caitano D'Souza from the Rego family more than 70 years ago. Though the sale deed remained to be executed the said Domingo took exclusive possession of the same over 70 years ago and planted trees on the property. After the death of Domingo, the plaintiff no.1, the widow and the son, have succeeded to the property and are looking after it.

3. Since the plaintiffs noticed on 9th December, 2003, some labourers working on the suit property, they instituted the present suit. The appellant i.e. the Government also claimed possession of the suit property. The appellant relied on finding given by the City Survey Officer that the property is entered in the

name of the appellant. However, that itself is questioned in the suit. The learned Civil Judge has come to a clear prima facie conclusion that from the old cadastral plan it is clear that the suit property does not belong to the Government. It is private property. Apparently, the learned Civil Judge has also relied on acquisition proceedings initiated in respect of the portion of the same land whereunder the compensation was awarded to the respondents. In fact, on a reference made by the respondents, the compensation was enhanced by the reference court. Also having regard to this prima facie material, the trial Court considered it appropriate to grant injunction.

4. Having regard to the fact that firstly the old cadastral survey plan shows that the property was not entered in the name of the Government and secondly that the

respondents have received compensation in respect of a portion of the same land acquired by the Government, I see no reason to interfere with the finding of the trial Court. No infirmity jurisdictional, or otherwise, is pointed out. The Appeal is, therefore, dismissed. Having regard to the fact that the suit is of the year 1998, the trial Court is requested to decide the same as expeditiously as possible.

S. A. BOBDE, J.

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